Supreme Court, U.S.
FILED

981773 MAY 3 - 1999

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

CLAUDE GRIFFIN
CLYDA MAE MYERS
TAMORA ROBINSON PETITIONERS

V.

LOTTIE CAMPBELL GRIFFIN RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MISSISSIPPI SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

EDWIN E. KERSTINE
225 AVALON CIRCLE
BRANDON, MS 39047
(601) 992-3003

2188

QUESTION PRESENTED FOR REVIEW

Were the Petitioners denied due process as granted under the 14th Amendment of the Constitution of the United States, when the trial court summarily dismissed, on the grounds of res judicata and collateral estoppel, the Petitioners suit for Declaratory Judgment filed against the Respondent regarding the ownership of their property; whereby denying and depriving the Petitioners of their basic right to be heard; when neither they, nor their predecessor in title to the lands they own, had ever been before a court to address and/or defend the issues and facts surrounding the ownership of their real property?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Mississippi Supreme Court and Mississippi Court of Appeals.

TABLE OF CONTENTS

	Pages
Question Presented for Review	i
List of Parties to the Proceedings in the Court Below	ii
Table of Contents	iii
Table of Authorities	iv
Opinions Below	1
Statement of Jurisdiction	2
Constitutional Provisions, Treaties, Statutes, Rules and Regulations involved	3
Statement of the Case	4
Reasons for Granting the Writ	7
Conclusion	15

INDEX TO APPENDICES

Appendix A: Decision of State Court of Appeals	1a
Appendix B: Decision of State Trial Court	10a
Appendix C: Decision of State Court of Appeals Denying Re-Hearing	16a
Appendix D: Order of State Supreme Court Denying Review	17a
Appendix E: Amended Suit for Declaratory Judgment	18a
Appendix F: Plaintiff's First set of Request for Admissions From the Defendant Response to Motion to compel discovery To Deem Admissions Admitted	127a

Appendix G: 133a
Affidavit of Patrick S.. McCarthy
Appendix H: 136a
Affidavit of Claude Griffin
Appendix I: 143a
Affidavit of Clyda Mae Myers
Appendix J:..... 150a
Affidavit of Tamora Robinson
Appendix K: 155a
Petition for Re-Hearing
Appendix L: 175a
Petition for Writ of Certiorari
To the Supreme Court of Mississippi

TABLE OF AUTHORITIES

CASES: Pages

Blounder-Tongue Laboratories Inc. v. University Foundation 402 U.S. 313.(1971)..... 14

Brooks v. Marbury, 11 Wheat 78 (1826)..... 11

Coe v. Armour Fertilizer Works, 237 U.S. 413..... 13

Hansberry v. Lee, 311 U.S. 32 (1940)..... 14

Johnson v. Johnson, 198 S.E. 451 (Va, 1938)..... 10

Louisville & Nashville R.R. Co. v. Schmidt 177 U.S. 230..... 13

Martin v. Adams, 62 So.2d 328 (Miss. 1953)..... 11

Martin v. Wilkes, 490 U.S. 755 14

McMillan v. Gibson, 76 So.2d 238 (Miss. 1954)..... 10

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)..... 14

Odom v. Forbes, 500 So.2d 997 (Miss. 1987)..... 10

Pennoyer v. Neff, 95 U.S. 714 13

Postal Telegraph Cable Company v. City of Newport, Kentucky , 247 U.S. 476 (1917)..... 13

Richards v. Jefferson County, Alabama 517 U.S. 793, (1995)..... 13

Salmon v. Thompson, 391 So.2d 984 (Miss. 1980)..... 10

Scott v. McNeal, 154 U.S. 34..... 13

Simon v. Craft 182 U.S. 427 13

Southern Pacific R.R. Co. v. United States, 168 U.S.1..... 13

Windsor v. McVeigh, 93 U.S. 274 13

Zenith Radio Corp. v. Hazeltine Research, Inc. 395 U.S. 100 (1969)..... 14

STATUTES AND RULES

OTHER

18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4449, p. 417 (1981) 14

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the highest court to review the merits appears at Appendix A to the petition and the opinion rendered is designated not to be unpublished.

The opinion of the trial court appears in Appendix B (p. 10a) to the petition and the opinion is unpublished.

JURISDICTION

The date on which the highest state court decided this case was on February 4, 1999, when the Petition for a Writ of Certiorari to the Supreme Court of Mississippi was denied.. A copy of the order denying certiorari appears at Appendix D.

The Petition for Rehearing to the Mississippi Court of Appeals was denied on October 8, 1998. A copy of the order denying the rehearing appears at Appendix C.

The date on which the Court of Appeals decided this case on the merits was on July 21, 1998, when the Mississippi Court of Appeals affirmed the trial court dismissal of the case. A copy of the decision appears at Appendix A.

The federal question was first raised in the Petitioners' suit for Declaratory Judgment filed in the lower trial court. The showing of the raising of the federal question is set out in Appendix D at page 30a. The federal question was raised in the issues presented to the Court of Appeals and was addressed in its dissenting opinion as set out in Appendix A, page 9a. The federal question was preserved and set out in Petitioners' request for Rehearing as set out in Appendix K, at page 166a , and again preserved in their Petition for a Writ of Certiorari in Appendix L, at page 180a.

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The cases involves the due process provision of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The three Petitioners are the deeded owners of eight parcels of land lying in Hinds County, Mississippi. These parcels came into controversy in 1994 when the Petitioners inadvertently learned that Lottie Griffin Campbell, their former sister-in-law, was in the process of executing on a judgment she held against her former husband, Sylvester, and that the sale of property targeted the lands owned by the Petitioners.

In 1988, Sylvester and Lottie Griffin began a long arduous process of divorce. On one of the hearing days, the attorney for Lottie Griffin announced to the Court that she had miraculously found a set of deeds on her doorsteps purporting to grant ownership in real property to Sylvester Griffin. These deeds were from Eolyn Griffin (mother of Sylvester Griffin), as Grantor, and Tracy Griffin (daughter of Sylvester Griffin), as Grantor, to Sylvester Griffin as the named Grantee. (Appendix E, pages: 77a, 79a, 81a, 83a, 85a, 87a, 89a, 91a,). Ms. Beck announced that she was going to the clerk's office right then and have these deeds recorded. This is exactly what she did, and that is how these eights parcels of land came to be in the chain of title of the Petitioners. At the time when Nancy Beck took the deeds to the recorders office, neither the respondent nor her attorney had any authority, permission, or consent from either the Grantor or the Grantee to record these deeds. (Appendix F: Request for Admissions p.127a read in conjunction with Appendix p. 130a: Response to admissions) and (Appendix H, p 139a; Appendix I, p.148a-149a and Appendix J, p. 153a-154a). Furthermore, neither of the two Grantors, (Eolyn Griffin and Tracy Griffin {now Madison}) were made parties to the divorce litigation at the time the deeds were recorded.

Eolyn Griffin and Tracy Griffin were never made parties at any time in the divorce action when the ownership of the lands in question came up. (Appendix H, I and J) It was during the divorce proceedings that the ownership questions of these parcels land were determined, and all done in court without the benefit of eit' er Eolyn Griffin or Tracy Griffin being noticed, summoned or heard and without either being able to defend their title. From those hearings, the Court ruled that the lands in question were now the properties of Sylvester Griffin. These lands became subject to the jurisdiction of the Court and to be dealt with accordingly during the divorce proceedings. In the end some of these parcels were declared to be marital assets, while other properties were declared to be the lands of Sylvester Griffin. As a result of the judgments rendered, all these parcels of land became subject to judgment liens and judicial execution or any court decreed settlement that the court deemed necessary.

The Petitioners' case for a Declaratory Judgment on the question of ownership of these lands originated in the Chancery Court of the First Judicial District of Hinds County, Mississippi. The Complaint for Declaratory Judgment requested the Court to declare null and void and to cancel these eight un-delivered and non-accepted, although recorded, deeds. After the deeds had been recorded, Sylvester Griffin, in disclaiming ownership of these parcels, returned the lands to their rightful owner through deed conveyances. As part of the suit for declaratory judgment, the Petitioners challenged the chain of title in which Sylvester Griffin's name became an "of record" title holder. This challenge was based on the premise that un-delivered and/or an unaccepted deeds, even after public recording, were "void" for all purposes. That the line of title showing Sylvester Griffin as the record

owner after the 1989 recordings was a dead end chain of title, that an undelivered and/or a non-accepted deed passes no title and therefore Sylvester Griffin did not acquire an interest in these lands. The Petitioners asserted that the ownership was never lost or divested out of Eolyn Griffin and Tracy Griffin Madison. The Petitioners claim the rights to their land through Eolyn Griffin and Tracy Madison, and their title does not stand on the strength of the title detoured briefly into the name of Sylvester Griffin.

The action brought by the Petitioners in the Chancery Court of Hinds County is an attack on the validity of the eight recorded deeds; wherein the Petitioners contended that when these deeds were recorded, they were un-delivered by the Grantors and were non- accepted by the Grantee, thus the conveyances are void. Second, the suit is collateral attack on a portion of the Griffin's divorce decree which had declared three of the eight properties in controversy were marital assets. Third, the suit further sought declaratory relief by requesting the Court to declare that a judgment held by Lottie Griffin against Sylvester Griffin and the lien created thereby, did not attach to the lands owned by the Petitioners, and to further declare that the lands were incapable of being sold through a judicial sale to satisfy the judgment held by Lottie Griffin. Fourth, the Plaintiffs further sought to quiet and confirm their title.

During these proceedings, the Defendant filed a motion to dismiss the Declaratory Judgment suit based on the preclusion doctrines of res judicata and collateral estoppel. On January 22, 1996, the Court issued its opinion and its findings of fact and conclusions of law and granted Defendant's 12(b)(6) motion to dismiss on the grounds of collateral estoppel and res judicata and finding among other things that there was "privity" between the Petitioners and

Sylvester Griffin, and therefore res judicata and collateral estoppel would apply. (Appendix B). From that ruling, the Petitioners appealed to the Mississippi Supreme Court. The case was assigned to the Mississippi Court of Appeals. In a five to five split decision, the Mississippi Court of Appeals affirmed the chancellor's decision, however the dissent believed that there was no "privity" involved in the case sub judice and that "no one with standing to assert the lack of delivery has ever been given the opportunity to litigate that claim." (Appendix A, page 9a) .That the litigants in this case have been denied fundamental due process (Appendix A, page 9a). The Petition for rehearing before the Court of Appeals and their Petition for a Writ of Certiorari before the Mississippi Supreme Court both were denied.

REASON FOR GRANTING THE WRIT

Petitioners consider that Courts below applied the wrong legal standard to established law, and the decision of the lower courts conflicts and is contradictory with established decisions of this court; when the Courts below denied due process to the Petitioners on a basic fundamental issue of property rights and ownership.

This case comes before this Court on the question of whether a state court, without due process, can declare current property owners to be in privity without their true predecessors in title ever being notice and summoned into Court to be heard and defend the ownership of their property, for the purpose of satisfying one of the elements of res judicata, when their predecessors in title had never been made parties to a lawsuit which took and divested their lands from them. When this occurred as it did in the instant case, the

Petitioners were denied their right to be heard, and it violated their due process rights as granted to them under the Fourteenth Amendment of our Constitution.

The true predecessors in title to the petitioners are Eolyn Griffin, mother of Sylvester Griffin, who was the owner of four parcels of lands in controversy, which she started acquiring 1967, which was prior to Sylvester marriage to Lottie with the earliest deed in 1967 and up until 1988 when Sylvester and Lottie were commencing their divorce proceedings. Tracy Griffin, daughter of Sylvester from a previous marriage, was the owner of the other four tracts of land now in controversy. Both Eolyn Griffin and Tracy Griffin executed deeds to Sylvester Griffin involving the parcels of lands which the Petitioners eventually came to own. These deeds were never delivered to Sylvester, but rather the deeds were in the possession and control of Eolyn, who kept them put away in her closet in her home (Appendix G, p. 134a) . At some stage during the divorce proceedings these deeds were taken from Eolyn Griffin's home and ended up with the attorney for Lottie Griffin, i.e. Nancy Beck. Ms. Nancy Beck announced that she had found deeds which conveyed property from Eolyn Griffin and Tracy Griffin to Sylvester Griffin. Ms. Beck announced to the Court that she was going to record these deeds. Ms. Beck took the Deeds which she said were found and record them. These deeds which were recorded are found as part of Appendix E, (pps. 77a through 91a).When Ms. Beck recorded these deeds from Eolyn Griffin to Sylvester Griffin and those from Tracy Griffin to Sylvester Griffin, she did not have permission, authority, consent or approval from either Eolyn Griffin or Tracy Griffin to record them. (Appendix F, p. 127a reading in conjunction with p.130a). Neither did she have permission, authority, approval, or consent from Sylvester Griffin to

record these eight deeds. Admissions of Lottie Griffin (Appendix F p. 127a read in conjunction with p. 130a). Further, at the time these recordings were accomplished by Ms. Beck, neither Eolyn Griffin nor Tracy Griffin were parties to the divorce proceedings in which Sylvester Griffin and Lottie Griffin were the only two parties over which the Court had jurisdiction and remained throughout the entire divorce proceeding the only parties. (Appendix E: pages 38a through 59a {Judgments of Divorce}). Yet, because the deeds were recorded and now showed Sylvester Griffin having an ownership in these properties, the Court declared these properties to be either marital assets or property titled in Sylvester Griffin name only. (Appendix E: pages 38a through 59a). Effectively what the trial court did in 1989, without due process, was to divest Eolyn Griffin and Tracy Griffin out of their property and declare the property to be that of Sylvester Griffin, all the while both Eolyn Griffin and Tracy Griffin were strangers to the lawsuit ongoing between Sylvester and Lottie Griffin.

When Nancy Beck recorded the eight deeds; there was:

(A) No delivery of the deeds from Eolyn Griffin as Grantor to Sylvester Griffin as Grantee;

(B) No delivery of the deeds from Tracy Griffin as Grantor to Sylvester Griffin, as Grantee, and there was

(C) No acceptance of these eight deeds by Sylvester Griffin.

Shortly after these recording took place Sylvester Griffin filed bankruptcy and it was during these bankruptcy proceedings that he took it upon himself to convey the properties which were wrongfully recorded to Eolyn Griffin and Tracy Griffin (now Madison). This occurred in 1991. These conveyances were recorded in August, 1994 when the

Petitioners discovered that Lottie Griffin was in the process of a sale of their lands to satisfy the judgment Lottie Griffin had obtained over Sylvester Griffin. After they filed their suit for Declaratory Judgment, Lottie Griffin moved for dismissal of the suit and the trial court granted same on the preclusion doctrines of res judicata and collateral estoppel and the court found that the Petitioners were "in privity" as to what occurred in the divorce proceedings between Sylvester and Lottie as to the properties, and decision of the trial court and what took place during that divorce, bound the Petitioners as to its outcome.

In *Johnson v. Johnson*, 198 S.E. 451, (Virginia, 1938) at 452, that Court in essence stated that a non-delivered deed passes no title. That a fraudulently removed deed and which is recorded is void. This is the basic law of real property and is uniform law throughout the country.

> Acceptance of a deed of conveyance and delivery of instrument work together and compliment each other; there must be a complete and unequivocal delivery of a deed of conveyance in order for it to vest title in purported grantee." *Salmon v. Thompson*, 391 So.2d 984, at 986 (Miss. 1980).
>
> In *Odom v. Forbes* 500 So.2d 997 at 1001, (Miss. 1987) the Mississippi Court stated: We have held that the delivery of a deed is largely a matter of intention of the grantor, manifested by words, acts and circumstances surrounding the transaction *McMillan v. Gibson*, 222 Miss. 408, 76 So.2d 239

(1954). Obviously, an acceptance would be manifested in the same way.

In *Martin v. Adams*, 62 So.2d 328 (Miss. 1953) the Mississippi Supreme Court concluded that the executed and recorded deed in that case was invalid because there was neither delivery of the deed nor acceptance of it by the grantee and the grantor remained in control over the deed. This Court has stated in *Brooks v. Marbury*, 11 Wheat. 78 (1826) "That deeds which are absolutely void cannot be the foundation of title."

Yet in spite of this line of cases, the trial court ruled the properties to be marital assets or Sylvester Griffin's assets. The Court was in error for the Court had no jurisdiction or authority to rendered such a judgment on the ownership of these properties since the Grantors were never noticed, were never made parties to the divorce action, and were never allowed to defend their title. That court had no jurisdiction over Eolyn Griffin and Tracy Griffin to rule on the property matters which were brought into the litigation by the un-authorized recording of deeds by the attorney for the opposing party. Those rulings by the court in the divorce action are what the Petitioners are challenging and the validity of that portion of those judgments which adjudicated these parcels of land to be marital assets and/or the properties of Sylvester Griffin.

The Petitioners in their suit were faced with the question of res judicata/collateral estoppel being applied to them as a result of the trial court in 1989 issuing a judgment on the ownership of these properties and then imputing to the Petitioners by way of privity that the title had been defended and then adjudicated as to ownership by to

strangers of this suit. The only party similar to the parties in the divorce litigation was the person of Lottie Griffin.

In essence what the trial court has done and affirmed by the Court of Appeals and the Mississippi Supreme Court is to deny the Petitioners their day in court, for these courts reasoned that the Petitioners were "in privity" in the former suit with their predecessor in title. In fact, in her opinion of January 22, 1996, the Chancellor made a statement that said the "Plaintiffs assert they are in privity with Sylvester in so much as they had executed deeds to Sylvester" (Appendix B, page 15a) This was not and is not the case. The Petitioners have never asserted that they were in privity with Sylvester Griffin. When looking at the record, there is nothing in the record which could allowed the courts to come to that conclusion. The only way privity would come into play in this case would be a set of facts which would have brought both Eolyn Griffin and Tracy Griffin into the divorce proceedings as party defendants to the issue of the ownership of the real property. The record is devoid of any such instance, because it never happened. (Appendix E, pages 38a-59a). The end result of the divorce hearing were reduced to a judgment, and nowhere in those judgments is it reflected that either Eolyn Griffin or Tracy Griffin were made parties to the litigation. (Appendix E, pages 38a through 59a). In actuality, the trial court denied due process to the present litigants vicariously through making the prior divorce judgment binding upon them, when in fact, their true predecessors in title, Eolyn Griffin and Tracy Madison, were never made parties to the divorce suit which divested these parcels of land away from them and placed ownership into the name of Sylvester Griffin.

This Court in *Postal Telegraph Cable Company v. City of Newport, Kentucky*, 247 U.S. 464 , 476v(1918)

> The doctrine of *res judicata* rests at the bottom upon the ground that the party to be affected , or some other with whom he is in privity, has litigated or had the opportunity to litigate the same matter in a former action in a court of competent jurisdiction. *Southern Pacific R.R. Co. v. United States*, 168 U.S. 1, 48; Greenleaf Ev. §§ 522-523. The opportunity to be heard is an essential requisite of due process in judicial proceedings. *Windsor v. McVeigh*, 93 U.S. 274,277; *Louisville & Nashville R.R. Co. v. Schmidt*, 177 U.S. 230, 236; *Simon v. Craft*, 182 U.S. 427, 436. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard. (*Pennoyer v. Neff*, 95 U.S. 714; *Scott v. McMeal*, 154 U.S. 34, 46; *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 423), so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party no in privity with a party herein.

This rationale has been carried through *Martin v. Wilkes* 490 U.S. 755 (1988) and *Richards v. Jefferson County, Alabama*, 517 U.S. 793. (1996). In *Martin v.*

Wilkes, Chief Justice Rehnquist delivered the majority opinion and stated that:

> It is a principal of general application in Angelo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation which he is not designated as a party or to which he has not been made a party by service of process. *Hansberry v. Lee*, 311 U.S. 32, 40 (1940). See, e.g., *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327, n. 7 (1979) *Blonder-Tongue Laboratories, Inc. v. University Foundation*, 402 U.S. 313, 328-329 (1971); *Zenith Radio Corp. v. Hazeltine Research, Inc.* 395 U.S. 100, 110 (1969). This rule is part of our "deep-rooted historic tradition that everyone should have his own day in court.: 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4449, p. 417 (1981). A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.

The argument herein is that both the lower trial court the Court of Appeals and the Mississippi Supreme Court, applied the wrong legal standard in deciding this case. This decision is which is contradictory to the Fourteenth Amendment of the United States Constitution, specifically the due process provision of that amendment. From the time the Petitioners filed their suit for Declaratory Judgment, they brought to the Court's attention the denial of due

process that had occurred when Eolyn Griffin's and Tracy Griffin's properties were summarily divested from them and vested with the parties of the ongoing divorce proceedings. (Appendix E, p. 30a). To hold that the Petitioners were in privity with Sylvester Griffin and to establish him as the predecessor in title to these lands in controversy, is erroneous. What in essence this does by establishing privity through Sylvester Griffin, it enables the Courts to skirt the real issue of due process and establish a alternate pathway wherein the Courts need not journey down the due process road, but rather terminate the proceedings under the guise that the Petitioners vicariously have already had their day in Court through their alleged predecessor in title. It negates the necessity on ruling upon property ownership in question, for once privity is established, you can then deny the Petitioners their day on Court under the premises that the issues have already been tired and they, the Petitioners, are bound by those results of the former court's judgment. By binding the Petitioners to these former judgments, the court has denied these Petitioners herein their basic right of due process.

CONCLUSION

For the foregoing reason, the petition for writ of certiorari should be granted.

Respectfully Submitted, this the 30th day of April, 1999.

Edwin E. Kerstine
225 Avalon Circle
Brandon, MS 39047
(601) 992-3003